

REMARKS

In the Official Action mailed on **30 November 2007**, the Examiner reviewed claims 1-40. Examiner rejected claims 1-40 as being based upon a defective reissue declaration under 35 U.S.C. §251. The specification and claims 23-40 were objected to.

Rejections Based on a Defective Declaration

Examiner rejected claims 1-40 as being based upon a defective reissue declaration.

Referring to claims 1-34, Examiner avers that the reissue declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. Specifically, Examiner avers that:

“the new limitations appear to be either the same as that of claim 1 just in a different language, or somewhat more limiting or specific than the corresponding limitations of claim 1. Yet it is difficult to see how the limitations of claim 1 are ‘more limiting than necessary, and resulted in the patentee claiming less than he had a right to claim.’”

Applicant respectfully disagrees. Applicant points out that:

“a claim will be considered a broadened reissue claim when it is greater in scope than **each and every claim** of the patent to be reissued. A corollary of this is that a claim which has been broadened in a reissue as compared to its scope in the patent is not a broadened reissue claim if it is narrower than, or equal in scope to, any other claim which appears in the patent.” (see MPEP §1412.03(II))

For example, consider claim 23. Applicant points out that the limitations in claim 23 are in fact greater in scope than each and every claim within issued patent 5,764,951 (hereinafter referred to as the “original issued patent”). There is no single claim or combination of claims within the original issued patent which can be construed to cover the subject matter of claim 23 with the same or broader scope as compared to claim 23. Specifically, consider claim 1 as compared to claim 23. Claim 1 includes the limitation “a loop with a delayed signal assignment having a delay value,” whereas claim 23 includes the limitation “a loop with N wait statements.”

First, Applicant points out that the text descriptions for the delayed signal assignment with a delay value and the N wait statements are not equivalent. Specifically, the text description as set forth in claim 23 necessarily includes N explicit wait statements whereas the text description as set forth in claim 23 includes a delay signal assignment with a specified delay value. Hence, although claim 1 and claim 23 include similar claim limitations, claim 1 and claim 23 are not the same scope for at least the reason that the text descriptions for the delayed signal assignment with a delay value and the N wait statements are not equivalent. In other words, claim 1 and claim 23 are directed to different embodiments.

Second, there are no unique combinations of claims within the original issued patent which includes the limitations as set forth in claim 23 with the same or broader scope as compared to claim 23. Applicant points out that although claim 2 includes similar language to the limitations in claim 23, the scope of claim 2, which includes the limitations of claim 1, is narrower than the subject matter in claim 23. Hence, claim 23 is broader in scope than any claim or combination of claims in the original issued patent. Claims 23-40 are broader for the same reason. Thus, the claims in the original issued patent are more limiting than necessary and resulted in the patentee claiming less than he had a right to claim.

Applicant has provided a supplemental reissue declaration by inventors Tai A. Ly and Donald B. MacMillen, which states with more specificity the reasons as to why patentee claimed less than he had the right to claim in the original issued patent. Inventor David W. Knapp has refused to sign any declarations, and the instant application has been accorded Rule 1.47(a) status with respect to inventor David W. Knapp in the PTO Petition Decision mailed 13 September 2003. Moreover, Applicant could not reach inventor Ronald A. Miller after diligent effort, and has filed a petition for a Rule 1.47(a) status for the instant application with respect to inventor Ronald A. Miller.

Examiner states that claims 4-6, 10, 12-14 were amended on 03 November 2003 and claims 4-5, 25-26, 29-30, and 33-34 were amended on 14 July 2005, but that these changes corresponding to the error identified in the declaration filed on 03 July 2002 are not apparent. Applicant has included a supplemental declaration stating the changes made to claims 4-6, 10, 12-14, 25-26, 29-30, and 33-34.

Hence, Applicant respectfully requests that the rejection of claims 1-40 as being based on a defective reissue declaration be withdrawn.

Objections to the Specification and Claims

Examiner objected to the specification and to claims 23-40 under 37 C.F.R. 1.173 because the amendments were not in proper format. Applicant in this Amendment paper has presented the claims and the amendments to the specification in a format which complies with 37 C.F.R. 1.173.

Hence, Applicant respectfully submits that all rejections and objections have been traversed and requests a Notice of Allowance.

CONCLUSION

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

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Date: 22 April 2008

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